

**HOUSE OF REPRESENTATIVES  
COMPILATION OF PUBLIC COMMENTS**

Submitted to the Committee on Criminal Jurisprudence  
For SJR 44

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Hearing Date: April 25, 2023 10:30 AM - or upon final adjourn./recess or bill referral if permission granted

Taylor Trevino  
self  
Austin, TX

I urge legislators to oppose this bill. Texas already holds thousands of people in jail simply because they are too poor to afford bail, and any steps to make it easier to hold people in jail before trial will fall hardest on Black and Brown Texans and people without money.

Nate Walker  
The Bail Project  
Austin, TX

The Bail Project writes to testify on SJR 44. Our work across the country proves that cash bail is unnecessary and that there are more effective ways to improve our nation's pretrial systems.

We would like to begin by thanking the committee for addressing many of our concerns in this new version of SJR 44. By limiting the list of offenses eligible for preventative detention and guaranteeing the right to counsel during detention hearings, this substitute represents a significant improvement from the version that passed the Senate – to which we testified in strong opposition.

Pretrial detention was designed as a carefully limited exception. Yet, today, there are over 50,000 people in Texas jails awaiting trial. While judges should be able to detain someone pretrial if there is clear and convincing evidence that the person poses a significant risk of danger to others if released or of willful flight, the previous version of this bill would have allowed judges to use pretrial detention far too liberally – even detaining people they believe may miss a future court date.

While we appreciate the improvements made to SJR 44, we remain concerned over the classification of “wilful nonappearance” as grounds for judges to deny bail altogether. Although more limited than “nonappearance” alone, this language may still result in the detention of people who pose absolutely no risk to public safety or even purposeful evasion of prosecution. Texans may miss their court dates because they cannot get the day off of work, need to care for their children when childcare is unavailable, or experience a sudden illness or personal emergency. These examples represent everyday challenges, and should not result in mandated detention. Instead, “wilful flight” would better uphold liberty and due process rights and avoid the unnecessary detention of legally innocent Texans. We urge you to adopt language that specifies only people who pose a risk of danger or are purposefully avoiding prosecution may be held in custody.

Even with these changes, SJR 44 will result in more Texans being locked in jails for weeks, months, and even years without having been convicted of a crime. Already, in some Texas county jails, there are people who have been awaiting their day in court for over three years. As a result of prolonged pretrial detention, Texans will plead guilty before trial and be sentenced to longer and stiffer sentences if convicted. They are also more likely to become involved in the criminal justice system again in the future. These consequences must be carefully considered before passing this constitutional amendment.

It is possible to improve public safety in Texas without opening the door to unnecessary incarceration. We should, instead, improve public safety by removing the failed policy of cash bail entirely while also encouraging the release of people whom judges do not believe pose a significant risk of danger or willful flight.

Jennifer Carreon, Dr.  
Texas Appleseed  
Austin, TX

OPPOSE SJR44

SJR 44 enshrines in the Texas Constitution a new provision that will trap thousands of Texans —disproportionately Black and Brown people — in jail for years on charges which they may be innocent of or that may ultimately be dismissed. It gives the government the unwarranted power to expand pretrial detention and jail thousands of people for long periods of time, on allegations which are legally presumed to be untrue, regardless of the strength of evidence against them. The only thing that the court must do is find you are likely to miss your court date. Or that you are likely to commit an offense that even indirectly affects public safety at any point in the future. Worse, SJR 44 explicitly states that it does not require testimonial evidence before making these determinations and denying bail entirely.

That's not fairness or justice. Incarceration is one of the most severe deprivations of liberty in our society. Jails are sites of suicides, overdoses, deaths, violence, and sexual assault. Jails also destabilize people, separating them from their families, communities, jobs, homes, and school. Jail is punishment that, if used, should only be used when people are convicted, or in those extremely rare cases in the pretrial context where there is clear and convincing evidence established in an adversarial evidentiary hearing that an individual will flee the jurisdiction or cause serious physical harm to a reasonably identifiable person.

We urge you to do everything you can to stop SJR 44. Thank you for your consideration.

Melissa Aellos  
Self - Educator  
Manor, TX

I oppose SJR 44 because it will threaten Texans' right to bail, liberty, and the key principle of innocence until proven guilty.

Jennifer Hixon  
Texas Civil Rights Project  
San Antonio, TX

Thank you for the opportunity to share comments on SJR 44. We greatly appreciate the changes made to the SJR by the House Criminal Justice Committee. The substituted language represents a significant improvement as approved by the Senate. However, TCRP has significant concerns about several sections of the current language, including the limits of bail for individuals accused of assault of a public servant with a deadly weapon. We are specifically concerned about the unintended consequences that may fall hardest on Texas school children. While the intent may be to tailor the language narrowly, this provision could unintentionally ensnare Texas children in crisis. Today in Texas, most public schools have a police officer assigned to patrol hallways, lunchrooms, school grounds, and after-school events. A student who is experiencing a mental or behavioral health crisis. The vast majority of children arrested on Texas school campuses for the use of a weapon, the weapons were fists. Students experiencing a crisis could be held without the possibility of bail. People in pretrial detention are held in facilities not intended for long-term detention, including poor access to physical and mental healthcare. Indefinite detention while awaiting trial is detrimental to the well-being of individuals who may be wrongly accused or be able to provide affirmative defenses for charges.

Last session, the legislature passed SB 6, which has significantly increased the number of people held in pretrial detention in Texas. Additional expansions in pretrial detention will not improve safety for Texans but will continue to detain more people before they have had an opportunity for a full and fair defense. For these and many other reasons, we oppose any expansion of pretrial detention in Texas, including SJR 44.

dalila reynoso

self

tyler, TX

My name is Dalila Reynoso. I am here to testify against SJR 44.

I am deeply concerned about the provisions in SJR 44 which will deny bail to individuals charged with aggravated assault. This is the most common charge we see in individuals who are arrested during a mental health crisis and people with intellectual and developmental disabilities.

I was born and raised in Smith county, Tyler. All my life, all I have seen is criminalization of poverty, criminalization of mental illness, criminalization of developmental disabilities. Which is why our jail is always overcrowded no matter how much we expand. I learnt through my organizing work that it's a statewide trend and not unique to Smith county where over 30% of our jail population is tagged as psychiatric.

Please allow me to share one such story behind the statistic.

Havilah Swanson was a 27 year old young woman who was a patient of our Local Mental Health Authority. In 2020, when her family called the LMHA for help during a psychotic episode, they got the sheriff's deputies in response. Havilah was issued an emergency detention to the hospital, sedated three times but she was still criminalized for her behavior. Havilah was arrested from the hospital and booked into our jail. Her charge - aggravated assault. Bond was set at \$2,500 with no consideration of her family's ability to pay. It's hard to imagine what happened in her magistration hearing. Those hearings are not open to the public in Smith county. Havilah's magistrate form says "refused to sign." I know that she had no capacity to understand or engage in her hearing.

Because three days later when the community got together to bail her out, she was still in severe psychosis. We rushed her to Terrell State Hospital where they refused to admit her. The local police was called to physically remove her from the premises. They had to use a net to control her. We drove two hours to neighboring county hospital where we were able to get her help. The DA later dropped all charges. But the harm was already done. Havilah and her family were so traumatized that they have since left the state of Texas. They did not want their daughter to be punished for her mental illness. For many of our community members, that is not an option.

Last year, 161 people reportedly died in custody in our jails.\* A large majority of them were pretrial. Pretrial detention became a death sentence for them. I respectfully urge this committee to protect pretrial liberty and the presumption of innocence until proven guilty. Please do not expand our system which already criminalizes our most vulnerable community members.

Please Vote NO on SJR 44.

Thank you.

Cindy Nitzsche

Self

Deer Park, TX

I support this measure. Judges must be given the explicit option to deny bail to persons accused of violent or sexual crimes. Too many district court judges in Texas are allowing bonds, even PR bonds, for violent offenders, and many of them offend again while on bond. This must stop. This bill is good for public safety.

Chris Morton, Judge  
230th District Court  
Houston, TX

I am Judge Chris Morton, 230th District Court, Harris County TX. I do not support or oppose SJR 44, but I wish to discuss practical ramification of the resolution. Texas is a "Right to Bail" State. TX Const. Art. I Sec 11 guarantees bail for people accused of every crime in Texas except for Capital Murder where there proof evident that the death penalty is a likely outcome. There are other provisions in the TX Constitution that allow for individuals to be held without bail, but they are generally reactive and based on factors outside of the circumstances of the case at the time of its filing. Public safety is a factor that is always taken into account when setting the amount of bail and the appropriate bond conditions for a case. However, in the event a judge finds that there are no bond conditions sufficient for the protection of alleged victims or the community as a whole, there is no mechanism in our law to deny bail. Furthermore, case law has directly prohibited judges from setting bail at an amount specifically to keep a defendant in custody. Therefore, even if a judge believes beyond all doubt that a defendant is danger to the public and alleged victims, that judge must set a bail that does not violate the defendant's right to liberty. By allowing judges the ability to hold a defendant without bail after a hearing based upon specific findings, judges would have a tool to address that short coming in our law.

Now, some may be concerned that prosecutors could arbitrarily use this provision to seek denial of bail to all individuals where this resolution allows, but I believe that is unlikely to occur. The reason is that a hearing is required in this resolution to deny bail and the Texas rules of evidence apply in all hearings to deny bail. This means that a District Attorney's Office must present actual evidence in court in order for the judge to grant their no bail motion. Hearsay or an offense report will not be enough to prevail. As such, a District Attorney will need to expend a lot of resources each time they seek to utilize this provision. No DA has unlimited resources; therefore, they must be judicious in selecting when they will use this possible provision.

While I, like many other Texans, am always skeptical of increasing governmental powers, I do believe that this resolution will have a positive impact on public safety and will advance our criminal law towards a fairer system of pretrial detention. A system based on risk as opposed to access to money.